

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	<b>Case No. 07-TE-10390-RAP</b>
	)	
<b>J. JEFFREY LONG,</b>	)	<b>DECISION AND ORDER OF INACTIVE</b>
	)	<b>ENROLLMENT (Bus. &amp; Prof. Code § 6007,</b>
<b>Member No. 119125,</b>	)	<b>subd. (c)(2).)</b>
	)	
<u>A Member of the State Bar.</u>	)	

**I. INTRODUCTION**

This matter is before the court on an application for involuntary enrollment to enroll respondent J. Jeffrey Long inactive, pursuant to Business and Profession Code, section 6007, subdivision (c)(2)<sup>1</sup> and rules 460 et seq. of the Rules of Procedure of the State Bar of California.<sup>2</sup> The application was filed on February 5, 2007. The respondent filed an opposition the application on February 27, 2007.

The Office of the Chief Trial Counsel, State Bar of California (State Bar) was represented by Deputy Trial Counsel Diane Meyers. Respondent was represented by Edward O. Lear, Esq. A hearing on the motion was held on March 9, 2007. The case was submitted at the close of the hearing.

For the reasons stated below, the court finds that the State Bar has proven by clear and convincing evidence that respondent has engaged in misconduct that has caused significant harm to clients and the public, that there is a reasonable likelihood that the harm will recur or continue, and

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<sup>1</sup>Unless otherwise indicated, all further references to sections refer to provisions of the California Business and Professions Code.

<sup>2</sup>Unless otherwise indicated, all further references to rules refer to provisions of the Rules of Procedure of the State Bar of California.

that there is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary matters.

**IT IS THEREFORE ORDERED** that respondent must be involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(1), effective three days after service of this order.

## **II. JURISDICTION**

Respondent was admitted to the practice of law in California on October 9, 1985, and has been a member of the State Bar at all times since.<sup>3</sup>

## **III. FINDINGS OF FACT AND CONCLUSION OF LAW**

### **A. Legal Background**

Section 6007, subdivision (c) authorizes this court to order an attorney's involuntary inactive enrollment "upon finding that the attorney's conduct poses a substantial threat of harm to the interest of the attorney's clients or the public ...." (Section 6007, subd. (c)(1). In order to find an attorney's conduct poses such a threat, section 6007, subdivision (c)(2) requires that each of the following facts be established by clear and convincing evidence:

- (1) the attorney has caused or is causing substantial harm to the attorney's clients or the public;
- (2) the attorney's clients or the public are likely to suffer greater injury from the denial of the involuntary inactive enrollment that the attorney is likely to suffer if it is granted, or there is a reasonable likelihood that the harm will reoccur or continue;  
and
- (3) there is reasonable probability that the State Bar will prevail on the merits on the underlying disciplinary matter.

(*Conway v. State Bar* (1989) 47 Cal.3d 1107, 1126; *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Crt. Rptr. 658, 661.)

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<sup>3</sup>Pursuant to Evidence Code section 452(h), the court takes judicial notice of the State Bar's official membership records.

Respondent's inactive enrollment is sought on the basis of the verified application for respondent's involuntary inactive enrollment, the declarations under penalty of perjury and exhibits submitted by the State Bar. The allegations set forth in the application are based on allegations contained in a notice of disciplinary charges filed on January 9, 2007 in State Bar Court case nos. 05-O-3581, 05-O-05177, 06-O-12296 and 06-O-14951.

**B. Case nos. 05-O-03581; 05-O-05177; 06-O-12296; 06-O-14951**

**a. Facts**

Having carefully reviewed the application and supporting evidence, the court finds that it supports the essential factual allegations set forth in the application at pages 4:1 through 13:15; 14:11 through 18:4; 18:21 through 19:11 and 19:15 through 20:11<sup>4</sup>, which establish that, under section 6007, subdivision (c)(2)(C), there is a reasonable probability that the State Bar will prevail as to the charges set forth below and, therefore, the court adopts those factual allegations as its findings of fact.

**b. Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

**1. Rule 4-100(A)(Not Maintaining Client Funds in Trust Account)**

Rule 4-100(A) of the Rules of Professional Conduct requires, in relevant part, that an attorney place all funds held for the benefit of clients, including advances for costs and expenses, in a client trust account.

It is reasonably probable that respondent violated this rule by not maintaining his clients' funds in the trust account as follows:

- (a) T. Oddo, \$215,000 between April 30, 2003 and January 22, 2004;
- (b) Nay, \$33,500 between August 29, 2003 and January 22, 2004;
- (c) T. and B. Fuhrmann and Dr. Cummings, \$15,816.54 between December 5, 2003 and January 22, 2004;

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<sup>4</sup>A copy of the application is attached hereto as exhibit A.

(d) Eiseman, \$7,675.50 between January 15 and 22, 2004; Also, by using Eiseman's funds to pay T. Oddo \$5,000 on July 15, 2005 and by not maintaining \$32,274.94 in the client trust account for Eiseman as of August 12, 2005;

(e) C. Merkle, \$33,356 between January 7 and 27, 2005;

(f) S. Kim and his medical providers, \$4,139 between February 14 and 22, 2005;

(g) N. Kim and her medical provider, \$1,150 between February 14 and 22, 2005;

(h) J. Kim and his medical provider, \$700 between February 14 and 22, 2005; and

(i) Lampara and Washick, \$32,347.42 between March 27 and April 14, 2006.

### **2. Section 6106 (Moral Turpitude/Misrepresentations)**

Section 6106 makes it a cause for disbarment or suspension to commit any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

It is reasonably probable that respondent violated section 6106 by making misrepresentations to Nay about his receipt of her settlement funds in July 2003 and by concealing the true status of the settlement funds to Lampara.

### **3. Rule 4-100(B)(1) (Not Promptly Notifying Client of Receipt of Funds)**

Rule 4-100(B)(1) of the Rules of Professional Conduct requires that an attorney promptly notify a client of the receipt of the client's funds, securities or other properties.

It is reasonably probable that respondent did not promptly notify his clients of the receipt of funds in the Nay and Lampara cases. He received Nay's funds in July 2003 but never told her. She discovered their receipt on November 9, 2005 when she obtained a copy of the negotiated settlement check. He received Lampara's funds in March 2006 but did not tell her about them until May 2006.

### **4. Rule 4-100(B)(4) (Not Promptly Paying Client Funds)**

Rule 4-100(B)(4) of the Rules of Professional Conduct requires that an attorney promptly pay or deliver, as requested by the client, any funds, securities or other properties in the possession of the attorney which the client is entitled to receive.

It is reasonably probable that respondent violated this rule by not promptly paying funds, as

requested by the client, which the client is entitled to receive in the Nay<sup>5</sup>, Lampara/Washick and Eiseman cases. Although Nay's funds were received in July 2003, he did not pay her until March 2006. Respondent received Lampara's funds in March 2006 and received partial payment in November 2006. As of January 16, 2007, Lampara and Washick had not received the balance of their funds.<sup>6</sup> Respondent did not pay Eiseman the settlement and return the unused portion of costs advanced between March 20, 2006 and January 14, 2007.<sup>7</sup>

#### **5. Section 6106 (Moral Turpitude/Misappropriations)**

It is reasonably probable that respondent repeatedly misappropriated funds belonging to his clients for his own use and purposes, including to pay clients whose funds he had previously misappropriated, in violation of section 6106<sup>8</sup> as follows:

(a) T. Oddo, \$215,000 between April 30, 2003 and January 22, 2004;

(b) Nay, \$33,500 between August 29, 2003 and January 22, 2004 and by not paying Nay \$33,500 until March 27, 2006;

(c) T. and B. Fuhrmann and Dr. Cummings, \$15,816.54 between December 5, 2003 and January 22, 2004;

(d) Eiseman, \$7,675.50 between January 15 and 22, 2004; Also, by using Eiseman's funds to pay T. Oddo \$5,000 on July 15, 2005; by not maintaining \$32,274.94 in the client trust account for Eiseman as of August 12, 2005; and by not paying Eiseman the settlement and returning the unused portion of costs advanced as requested;

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<sup>5</sup>The court notes that the notice of disciplinary charges filed January 9, 2007 does not contain such a charge with regard to the Nay case.

<sup>6</sup>In his declaration executed in court on March 9, 2007, respondent states that Lampara and Washick have been "fully paid the entire sum to which they were due" without setting forth the amount of payment or when it was made.

<sup>7</sup>In his March 9, 2007, declaration, respondent states that Eiseman has not been fully paid because his case has not been resolved and remains on appeal.

<sup>8</sup>The application sets forth the essential allegations of this misappropriation charge but does not cite to section 6106; however, the notice of disciplinary charges, which is exhibit 1 to the application, does cite to it. Accordingly, the court believes that respondent has had sufficient notice of the substance of this charge to address it.

(e) C. Merkle, \$33,356 between January 7 and 27, 2005;  
(f) S. Kim and his medical providers, \$4,139 between February 14 and 22, 2005;  
(g) N. Kim and her medical provider, \$1,150 between February 14 and 22, 2005;  
(h) J. Kim and his medical provider, \$700 between February 14 and 22, 2005; and  
(i) Lampara and Washick, \$32,347.42 between March 27 and April 14, 2006; not paying Lampara \$11,525 until November 1, 2006; and not paying the remaining balance of \$5,550 to Lampara and Washick.<sup>9</sup>

#### **IV. DISCUSSION**

Respondent should be enrolled inactive because the court finds by clear and convincing evidence that:

1. he was properly given notice of the proceeding pursuant to rule 461;
  2. each of the factors prescribed by section 6007, subdivision (c)(2) has been established by clear and convincing evidence; and
  3. his conduct poses a substantial threat of harm to his clients or the public.
- (Rule 466(b).)

As set forth above, it appears that respondent has, for about three years, engaged in a continuing pattern of as-yet unexplained misconduct, including repeatedly misappropriating a total of about \$356,000 in client funds, not maintaining client funds in trust, making numerous false statements to his clients concerning his receipt of their funds and the status of their funds, and not promptly paying all funds currently due his clients. Respondent conduct appears to demonstrate a total disregard for clients' welfare and for his ethical duties.

Where, as here, "the evidence establishes a pattern of behavior, including acts likely to

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<sup>9</sup>In his March 9 declaration, respondent states that the Oddos, Nay, the Fuhrmanns, Merkel and S. Kim have been paid. Other than as to the Oddos and Nay, the declaration does not set forth the amounts paid. The declaration does not set forth the dates of payment to any of the clients. As to the Eiseman and Lampara/Washick matters, please see footnotes 6 and 7, *ante*.

Respondent also states that, during 2003 and 2004, his firm was "suffering from severe financial strain resulting from, *inter alia*, massive debt related to a former partner who left the firm." No other amplification of this statement or explanation for the alleged misconduct was submitted nor was there any indication of steps taken, if any, to prevent its reoccurrence.

cause substantial harm, the burden of proof shall shift to the attorney to show that there is no reasonable likelihood that the harm will reoccur or continue.” (Section 6007, subd. (c)(2)(B).) Respondent has not shown a reasonable likelihood that the harm will not reoccur or continue.

Thus the court finds that respondent has caused and is continuing to cause substantial harm to his clients or the public. There is a reasonable likelihood that the harm will reoccur or continue if respondent is not involuntarily enrolled to inactive status. The court also finds that respondent’s clients or the public are likely to suffer greater injury from the denial of the involuntary inactive enrollment than respondent will suffer if it is granted.

Further, the court finds there is a reasonable probability that the State Bar will prevail on the merits on the above-described matters.

On the basis of the foregoing, there is clear and convincing evidence that respondent’s conduct poses a threat of harm to the interests of his clients and to the public. Accordingly, he should be enrolled inactive.

#### **V. ORDER**

Accordingly, **IT IS ORDERED** that respondent **J. JEFFREY LONG** be enrolled as an inactive member of the State Bar of California, pursuant to Business and Professions Code section 6007, subdivision (c)(1) effective three days after service of this order by mail. (Rule 466(b).) The State Bar Court is ordered to give written notice of this order to respondent and to the Clerk of the Supreme Court of California. (Section 6081.)

**IT IS FURTHER ORDERED** that:

1. Within thirty (30) days of service of this order upon him, respondent must:
  - a. notify all clients being represented in pending matters and any co-counsel of his involuntary inactive enrollment and his consequent immediate disqualification to act as an attorney and, in the absence of co-counsel, notify the clients to seek legal advice elsewhere, calling attention to the urgency in seeking the substitution of another attorney in his place;
  - b. deliver to all clients being represented in pending matters any papers or other property to which the clients are entitled, or notify the clients and any

co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to the urgency of obtaining the papers or other property;

- c. refund any part of any fees paid in advance that have not been earned; and
- d. notify opposing counsel in pending matters, or in the absence of counsel, the adverse parties, of his involuntary inactive enrollment, and file a copy of the notice with the court, agency or tribunal before which the matter is pending for inclusion in the respective file or files.

2. All notices required to be given in paragraph 1 must be given in registered or certified mail, return receipt requested, and shall contain respondent's current State Bar membership records address where communications may thereafter be directed to him.

3. Within forty (40) days of the involuntary inactive enrollment, respondent must file with the State Bar Court an affidavit showing that he has fully complied with the provisions of paragraphs 1 and 2 of this order. The affidavit must also contain respondent's current State Bar membership records address where communications may thereafter be directed to him.

4. Respondent must keep and maintain records of the various steps taken by him in compliance with this order so that, upon any petition for termination of inactive enrollment, proof of compliance with this order will be available for receipt into evidence. Respondent is cautioned that failure to comply with the provisions of paragraphs 1 - 4 of the order may constitute grounds for denying his petition for termination of inactive enrollment or reinstatement.

Dated: March 22, 2007

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RICHARD A. PLATEL  
Judge of the State Bar Court